

SENATE BILL 98

Q3, C8
SB 596/09 – B&T

0lr1407

By: **Senator Mooney**
Introduced and read first time: January 14, 2010
Assigned to: Budget and Taxation

A BILL ENTITLED

1 AN ACT concerning

2 **Income Tax – Film Production Activity Credit**

3 FOR the purpose of repealing the Film Production Rebate Program; allowing certain
4 film production entities to claim a credit against the State income tax for
5 certain costs incurred for certain film production activities within the State;
6 requiring a film production entity to apply with the Department of Business and
7 Economic Development to be a qualified film production entity; requiring the
8 Secretary of the Department to determine if the film production entity qualifies
9 for the credit; requiring that the estimated total direct costs incurred in the
10 State exceed a certain amount; authorizing the Secretary to require the entity
11 to provide certain information; authorizing the Secretary to require that certain
12 information be verified by an independent auditor; requiring a qualified film
13 production entity to apply for a tax credit certificate from the Department;
14 authorizing the Secretary to provide for the form of the application; requiring
15 the application to include certain information; requiring the Secretary to
16 determine the total direct costs that qualify for the tax credit and issue a tax
17 credit certificate for a certain percentage of the total direct costs; requiring the
18 Secretary to notify the Comptroller of the amount of any tax credit certificate
19 issued; providing that the total direct costs for a film production activity may
20 not include the wages of an employee if the employee's wages exceed a certain
21 amount; requiring that each year the Department report to the Governor and
22 the General Assembly certain information regarding the tax credit; requiring
23 the Department and the Comptroller to jointly adopt certain regulations;
24 defining certain terms; providing for the application of this Act; and generally
25 relating to an income tax credit for certain film production activities.

26 BY repealing

27 Article – Economic Development

28 Section 4–401 through 4–407 and the subtitle “Subtitle 4. Film Production
29 Rebate Fund”

30 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2008 Volume and 2009 Supplement)

2 BY adding to

3 Article – Tax – General

4 Section 10–728

5 Annotated Code of Maryland

6 (2004 Replacement Volume and 2009 Supplement)

7 Preamble

8 WHEREAS, The State of Maryland has a long and successful history of movie
9 making in the State; and

10 WHEREAS, Producing large scale movies in Maryland provides strong stimulus
11 to the State’s economy by creating jobs for Maryland workers and generating sales by
12 Maryland businesses; and

13 WHEREAS, Significant amounts of State and local tax revenues are generated
14 by the economic activity created from producing films in Maryland; and

15 WHEREAS, Maryland’s geographic, cultural, physical, and historic attributes
16 provide many favorable settings for film production in the State; and

17 WHEREAS, Key decision makers in the movie industry have demonstrated a
18 preference in and commitment to making movies in the State; and

19 WHEREAS, The scope of film production activity is broad and diverse resulting
20 in substantial expenditures within a state on local companies and businesses that
21 become part of the film production activity; and

22 WHEREAS, In addition to economic benefits derived from film production
23 activity, the long-term benefits include development and establishment of spin-off
24 film production activities such as editing, sound production, creative and artistic
25 activities, development of permanent facilities such as sound stages and studios and
26 cottage industries related to independent movie making, documentaries, advertising,
27 and other film and video activity; and

28 WHEREAS, Other states have established proven models for attracting film
29 production activity to their states to the detriment of such activity in Maryland; and

30 WHEREAS, Maryland can adopt such proven methods resulting in the
31 immediate generation of new economic activity within the State, including the
32 derivative benefits described above; and

33 WHEREAS, Maryland’s economy and Maryland’s State and local tax revenues
34 would receive the direct benefit of these new activities prior to the distribution of the
35 rebated portion of the film production costs back to the film production company; and

1 (a) To be eligible for a rebate under this subtitle, a qualified film production
2 entity shall incur total direct costs of at least \$500,000 in the State for a single film
3 production activity.

4 (b) To qualify for the rebate provided under this subtitle, a film production
5 entity shall notify the Department of the intent of the entity to seek the rebate before
6 beginning the film production activity.

7 (c) To apply for the rebate, the film production entity shall submit to the
8 Secretary:

9 (1) a description of the anticipated film production activity, including
10 its projected total budget with estimated number of employees and total wages, and
11 anticipated dates for carrying out the major elements of the film production activity;
12 and

13 (2) any other information that the Secretary requires related to the
14 film production activity and the entity seeking the rebate.

15 (d) The Secretary may require any information required under this section to
16 be verified by an independent auditor that:

17 (1) the film production entity seeking the rebate certification selects
18 and pays for; and

19 (2) the Secretary approves.

20 (e) As a condition of applying for and receiving the rebate, the qualified film
21 production entity shall enter into a grant agreement with the Department that is
22 satisfactory to the Department.]

23 [4-404.

24 The Department may grant to a qualified film production entity, from the Fund,
25 a rebate not to exceed 25% of the total direct costs that the qualified film production
26 entity has paid for a particular film production activity.]

27 [4-405.

28 (a) There is a Film Production Rebate Fund in the Department.

29 (b) The Department shall administer the Fund.

30 (c) (1) The Fund is a special, nonlapsing fund that is not subject to
31 reversion under § 7-302 of the State Finance and Procurement Article.

1 (2) The Treasurer shall hold the Fund separately and the Comptroller
2 shall account for the Fund.

3 (d) The Fund consists of:

4 (1) money appropriated by the State to the Fund;

5 (2) repayments of any defaulted grant from the Fund; and

6 (3) any other money made available to the Department for the Fund.

7 (e) The Department may use the Fund to:

8 (1) make grants to qualified film production entities as rebates in
9 accordance with this subtitle; and

10 (2) pay the administrative, legal, and actuarial expenses of the Fund.

11 (f) (1) The Treasurer shall invest the money of the Fund in the same
12 manner as other money of the State may be invested.

13 (2) Any investment earnings of the Fund shall be credited to the
14 Fund.]

15 [4-406.

16 The Secretary shall adopt regulations to specify eligibility criteria and
17 application procedures for the rebate under this subtitle.]

18 [4-407.

19 (a) On or before December 31 of each year, the Department shall report to
20 the Governor and, in accordance with § 2-1246 of the State Government Article, to the
21 General Assembly on the grants provided as rebates for film production activity in the
22 preceding fiscal year.

23 (b) The report shall include:

24 (1) the number of local technicians, actors, and extras hired for film
25 production activity during the reporting period;

26 (2) a list of companies doing business in the State, including hotels,
27 that directly provided goods or services for film production activity during the
28 reporting period; and

29 (3) any other information that indicates the economic benefits to the
30 State resulting from film production activity during the reporting period.]

Article – Tax – General

10-728.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) “DEPARTMENT” MEANS THE DEPARTMENT OF BUSINESS AND ECONOMIC DEVELOPMENT.

(3) (I) “FILM PRODUCTION ACTIVITY” MEANS THE PRODUCTION OF A FILM OR VIDEO PROJECT THAT IS INTENDED FOR NATIONWIDE COMMERCIAL DISTRIBUTION.

(II) “FILM PRODUCTION ACTIVITY” INCLUDES THE PRODUCTION OF:

1. A FEATURE FILM;
2. A TELEVISION PROJECT;
3. A COMMERCIAL;
4. A CORPORATE FILM;
5. AN INFOMERCIAL;
6. A MUSIC VIDEO;
7. A DIGITAL PROJECT;
8. AN ANIMATION PROJECT; OR
9. A MULTIMEDIA PROJECT.

(III) “FILM PRODUCTION ACTIVITY” DOES NOT INCLUDE PRODUCTION OF:

1. A STUDENT FILM;
2. A NONCOMMERCIAL PERSONAL VIDEO;
3. A SPORTS BROADCAST;

1 4. A BROADCAST OF A LIVE EVENT; OR

2 5. A TALK SHOW.

3 (4) “QUALIFIED FILM PRODUCTION ENTITY” MEANS AN ENTITY
4 THAT:

5 (I) IS CARRYING OUT A FILM PRODUCTION ACTIVITY; AND

6 (II) THE SECRETARY DETERMINES TO BE ELIGIBLE FOR THE
7 TAX CREDIT UNDER THIS SECTION IN ACCORDANCE WITH SUBSECTION (C) OF
8 THIS SECTION.

9 (5) “SECRETARY” MEANS THE SECRETARY OF THE DEPARTMENT
10 OF BUSINESS AND ECONOMIC DEVELOPMENT.

11 (6) (I) “TOTAL DIRECT COSTS”, WITH RESPECT TO A FILM
12 PRODUCTION ACTIVITY, MEANS THE TOTAL COSTS INCURRED IN THE STATE
13 THAT ARE NECESSARY TO CARRY OUT THE FILM PRODUCTION ACTIVITY.

14 (II) “TOTAL DIRECT COSTS” INCLUDES COSTS INCURRED
15 FOR:

16 1. EMPLOYEE WAGES AND BENEFITS;

17 2. FEES FOR SERVICES;

18 3. ACQUIRING OR LEASING PROPERTY; AND

19 4. ANY OTHER EXPENSE NECESSARY TO CARRY OUT
20 A FILM PRODUCTION ACTIVITY.

21 (III) “TOTAL DIRECT COSTS” DOES NOT INCLUDE ANY
22 SALARY, WAGES, OR OTHER COMPENSATION FOR PERSONAL SERVICES OF AN
23 INDIVIDUAL WHO RECEIVES MORE THAN \$1,000,000 IN SALARY, WAGES, OR
24 OTHER COMPENSATION FOR PERSONAL SERVICES IN CONNECTION WITH ANY
25 FILM PRODUCTION ACTIVITY.

26 (B) (1) A QUALIFIED FILM PRODUCTION ENTITY MAY CLAIM A CREDIT
27 AGAINST THE STATE INCOME TAX FOR FILM PRODUCTION ACTIVITIES IN THE
28 STATE IN AN AMOUNT EQUAL TO THE AMOUNT STATED IN THE FINAL TAX
29 CREDIT CERTIFICATE APPROVED BY THE SECRETARY FOR FILM PRODUCTION
30 ACTIVITIES.

1 **(2) IF THE TAX CREDIT ALLOWED UNDER THIS SECTION IN ANY**
2 **TAXABLE YEAR EXCEEDS THE TOTAL TAX OTHERWISE PAYABLE BY THE**
3 **QUALIFIED FILM PRODUCTION ENTITY FOR THAT TAXABLE YEAR, THE**
4 **QUALIFIED FILM PRODUCTION ENTITY MAY CLAIM A REFUND IN THE AMOUNT**
5 **OF THE EXCESS.**

6 **(C) (1) BEFORE BEGINNING A FILM PRODUCTION ACTIVITY, A FILM**
7 **PRODUCTION ENTITY SHALL SUBMIT TO THE DEPARTMENT AN APPLICATION TO**
8 **QUALIFY AS A FILM PRODUCTION ENTITY.**

9 **(2) THE APPLICATION SHALL DESCRIBE THE ANTICIPATED FILM**
10 **PRODUCTION ACTIVITY, INCLUDING:**

11 **(I) THE PROJECTED TOTAL BUDGET;**

12 **(II) THE ESTIMATED NUMBER OF EMPLOYEES AND TOTAL**
13 **WAGES TO BE PAID; AND**

14 **(III) THE ANTICIPATED DATES FOR CARRYING OUT THE**
15 **MAJOR ELEMENTS OF THE FILM PRODUCTION ACTIVITY.**

16 **(3) TO QUALIFY AS A FILM PRODUCTION ENTITY, THE ESTIMATED**
17 **TOTAL DIRECT COSTS INCURRED IN THE STATE MUST EXCEED \$500,000.**

18 **(4) THE APPLICATION SHALL INCLUDE ANY OTHER INFORMATION**
19 **REQUIRED BY THE SECRETARY.**

20 **(5) THE SECRETARY MAY REQUIRE THE INFORMATION PROVIDED**
21 **IN AN APPLICATION TO BE VERIFIED BY AN INDEPENDENT AUDITOR SELECTED**
22 **AND PAID FOR BY THE FILM PRODUCTION ENTITY SEEKING CERTIFICATION.**

23 **(6) THE SECRETARY SHALL:**

24 **(I) DETERMINE IF THE FILM PRODUCTION ENTITY**
25 **QUALIFIES FOR THE CREDIT UNDER THIS SECTION; AND**

26 **(II) NOTIFY THE COMPTROLLER OF THE ESTIMATED**
27 **AMOUNT OF TOTAL DIRECT COSTS AND THE TAXABLE YEAR THE CREDIT WILL BE**
28 **CLAIMED.**

29 **(D) (1) AFTER COMPLETION OF THE FILM PRODUCTION ACTIVITY, A**
30 **QUALIFIED FILM PRODUCTION ENTITY SHALL APPLY TO THE DEPARTMENT FOR**
31 **A TAX CREDIT CERTIFICATE.**

1 **(2) THE APPLICATION SHALL BE ON A FORM REQUIRED BY THE**
2 **SECRETARY AND SHALL INCLUDE:**

3 **(I) PROOF OF THE TOTAL DIRECT COSTS THAT QUALIFY**
4 **FOR THE TAX CREDIT; AND**

5 **(II) THE NUMBER OF EMPLOYEES HIRED AND WAGES PAID.**

6 **(3) THE SECRETARY SHALL DETERMINE THE TOTAL DIRECT**
7 **COSTS THAT QUALIFY FOR THE TAX CREDIT AND ISSUE A TAX CREDIT**
8 **CERTIFICATE FOR 30% OF THE TOTAL DIRECT COSTS THAT QUALIFY FOR THE**
9 **TAX CREDIT.**

10 **(4) THE SECRETARY SHALL NOTIFY THE COMPTROLLER OF THE**
11 **AMOUNT OF A TAX CREDIT CERTIFICATE ISSUED UNDER THIS SUBSECTION.**

12 **(E) ON OR BEFORE JANUARY 1 OF EACH YEAR, THE DEPARTMENT**
13 **SHALL REPORT TO THE GOVERNOR AND, SUBJECT TO § 2-1246 OF THE STATE**
14 **GOVERNMENT ARTICLE, THE GENERAL ASSEMBLY, ON:**

15 **(1) THE NUMBER OF FILM PRODUCTION ENTITIES TO APPLY**
16 **UNDER SUBSECTION (C) OF THIS SECTION; AND**

17 **(2) THE NUMBER AND AMOUNT OF TAX CREDIT CERTIFICATES**
18 **ISSUED UNDER SUBSECTION (D) OF THIS SECTION.**

19 **(F) THE DEPARTMENT AND THE COMPTROLLER JOINTLY SHALL ADOPT**
20 **REGULATIONS TO CARRY OUT THE PROVISIONS OF THIS SECTION AND TO**
21 **SPECIFY CRITERIA AND PROCEDURES FOR THE APPLICATION FOR, APPROVAL**
22 **OF, AND MONITORING OF CONTINUING ELIGIBILITY FOR THE TAX CREDIT**
23 **UNDER THIS SECTION.**

24 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
25 July 1, 2010, and shall be applicable to all taxable years beginning after December 31,
26 2009.